

APPENDIX 1



Appeal Decision

Site visit made on 2 March 2021

by Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/V2255/20/W/3256730

Land to the south of Chequers Road, Minster on Sea ME12 3SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Richard Alderson against Swale Borough Council.
 - The application Ref 20/500400/OUT, is dated 24 January 2020.
 - The development proposed is erection of 5No. dwellings on the land to the south of Chequers Road with matters other than access reserved.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 5No. dwellings with access from Chequers Road with all other matters reserved, on land to the south of Chequers Road, Minster on Sea, ME14 3SH, in accordance with the terms of the application, Ref 20/500400/OUT, dated 24 January 2020, and the plans submitted with it, subject to the conditions included in the schedule to this decision.

Application for costs

2. An application seeking a full award of costs against the Council has been submitted by the appellant. This application is the subject of a separate letter.

Procedural Matters

3. The application has been submitted in outline with all matters reserved apart from means of access. I am treating the layout plans and elevational details which have been submitted with the application as for illustrative purposes only.
4. A Unilateral Undertaking providing for financial contributions towards mitigation for the likely recreational impacts of the appeal scheme on the North Kent Marshes Special Protection Area (SPA) was submitted with the appeal. I address this in more detail in this decision.

Main Issue

5. The effect of the proposal on the character and appearance of the area.

Reasons

6. The appeal site lies on the south side of Chequers Road and would use an existing point of access. It comprises a paddock and is located to the rear of new housing development which will be completed shortly. The site slopes

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upwards from its access point which also slopes down to the west to the rear garden of a large detached property, Martindale.

7. The site lies just beyond the built up area of Minster although it has good pedestrian access to shops and services. Accordingly, it forms part of open countryside which extends to the south of the site. Due to its topography, development on this site could be visible from surrounding residential properties and from across the wider area. For this reason, the appeal scheme would have some impact on the character and appearance of the area.
8. The adopted Local Plan¹ has a common thread running through policies ST1, ST3, ST6 and DM24 which require new development to be concentrated within the key settlements of Faversham, Sittingbourne and Sheerness. Minster is classified as a tier 3 Urban Local Centre and Policy ST6 identifies the town in the 'west Sheppey triangle' where growth is to be supported whilst ensuring that development is appropriate to landscape character and quality. Complementing these policies Policy DM24 seeks to protect and enhance non protected landscapes.
9. For these reasons whilst the development of the site would conflict with adopted policies, the harm arising would be limited. I conclude therefore, that the proposal's conflict with policies ST1, ST3, ST6 and DM24 of the Local Plan would not be significant.

Unilateral Undertaking

10. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage². This responsibility now falls to me within this appeal.
11. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of European sites either alone or in combination with other plans or projects.
12. The site falls within the 'Zone of Influence' for the North Kent Strategic Access and Monitoring (SAMMS). This includes the following protected area, the Thames Estuary and Marshes Special Protection Area (SPA), Medway SPA and the Swale SPA. These sites qualify as being internationally important for wintering and migrating wildfowl and wading birds including a number of 'red list' species.
13. These sites are used for public recreation and there is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the aforementioned qualifying features of the SPAs due to the increased recreational use.
14. After carefully reviewing the evidence I agree that this would be the case and therefore it is incumbent upon me to undertake an Appropriate Assessment. As part of this process, I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow

¹ Bearing Fruits 2013-2031: the Swale Borough Local Plan

² People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

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development to proceed in the knowledge that the conservation objectives of this site would not be compromised.

15. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the SAMMS. This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
16. The main parties agree that the mitigation can be delivered via the appellant entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (the Act). The appellant has supplied a completed Unilateral Undertaking agreement with all requisite signatories upon it which addresses the additional 5 dwellings which the new scheme includes.
17. The Undertaking, submitted with the appeal, through the provision of financial contributions, would therefore serve to mitigate the recreational impacts arising from the proposal.
18. On this basis, I am able to conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the identified SAC either alone or in combination with other projects.

Planning balance and conclusions

19. Both parties agree that the Council does not have a 5 year housing land supply (5YHLS). In these circumstances, Paragraph 11d) and footnote 7 of the National Planning Policy Framework (the Framework) is implemented. This requires that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
20. I regard the adopted policies ST1, ST3 and ST6, as consistent with the Framework in seeking to direct new development to the Borough's main centres. In particular, Policy DM24 accords with Paragraph 170 of the Framework in affording protection for the countryside whilst maintaining discretion for decision makers. Accordingly, I afford each of these policies considerable weight in this decision.
21. Set against the adherence to the adopted policy the appeal scheme has many advantages when considered against the Framework as a whole. Part of the social role of sustainable development as defined by the Framework would be achieved by this scheme, for instance through the delivery of new homes with access to Minster by public transport and walking. The scheme would also make a limited contribution to the economic dimension of sustainable development during the construction phase, as well as through the additional spending power of 5 new households in local shops and services.
22. The delivery of new homes would make a small contribution to address the shortfall in the 5YHLS.
23. The limited harm arising from the proposal in respect of its potential impact on landscape could be mitigated when details are considered in respect of both landscape and layout at the reserved matters stage.

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24. Overall, I find that the harm arising from the appeal scheme would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework as a whole. Therefore, the proposal would represent sustainable development. It would accord with the requirements of the Local Plan in securing a supply of housing.
25. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

26. In considering the conditions required for this decision I have had regard to those suggested by the Council and the appellants comments and considered these against the Planning Practice Guidance.
27. Accordingly, I have imposed conditions in respect of time limits for the submission of the outstanding reserved in line with Section 92 of the Town and Country Planning Act 1990, as amended. Given the slopes across the site I have included a condition in respect of levels to ensure that development can be accommodated appropriately on the site. For reasons of certainty, I have included a condition specifying the plans for the scheme.
28. Other conditions in respect of energy efficiency and water consumption have been imposed in terms of the sustainability of the scheme. To ensure that the construction works are completed in a way which minimises disturbance to neighbouring residential occupiers I have imposed a condition designed to control all aspects of construction activities at the site.
29. In the interests of highway safety, I have included conditions on sight lines to the proposed access, the width of the highway into the site and the detailed design of the highways within the site.
30. I have not, however, included some of the Council's suggested conditions as they relate to the detail of the scheme and can be addressed at the next stage in the application process.
31. Finally, given that this site lies on the edge of Minster I have included a condition in respect of lighting to minimise impacts from light spillage on local biodiversity.

Stephen Wilkinson

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Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved and submitted plans and documents: Existing Site Layout Plan 19.92 PR08 and Site Location Plan 19.92.PR07
- 2) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 5) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) No construction work shall take place on any Sunday or Bank Holiday, nor any other day except between the following times – Monday-Friday 0800 -1800 hours, Saturdays 0800-1300 hours unless in association with an emergency or with the prior written approval of the local planning authority.
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust and dirt during construction;
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

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- 7) Prior to the construction of the dwellings, details of the materials and measures to be used to increase energy efficiency and thermal performance and reduced carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.
- 8) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no dwelling shall be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector.
- 9) Notwithstanding the approved plans, a 5.5M wide access for the first 10M from the carriageway edge shall be completed prior to the occupation of any buildings, hereby approved, in accordance with the details to should be submitted to and improved in writing by the local planning authority.
- 10) Before the 1st occupation of the dwellings, hereby approved, the following works between the dwellings and the adopted highway shall be completed as follows:
 - A) footways and or footpaths shall be completed with the exception of the wearing course
 - B) carriageways completed with the exception of the wearing course including the provision of a turning facility beyond the dwelling together with related:
 - highway drainage, including off site works,
 - junction visibility displays
 - street lighting, street nameplates and highway structures if any.
- 11) Before the dwellings here permitted, are first occupied, the area between the near side carriageway edge and lines drawn between a point 2.4 metre back from the carriage way edge along the centre line of the access and points on the carriageway edge 43 metres from and on both sides of the centre line of the access, shall be cleared of obstruction to visibility, at and above a height of 0.9 metres above the nearside carriageway level, and thereafter maintained free of obstruction at all times.
- 12) Within three months of works commencing on site a lighting scheme must be submitted for written approval by the local planning authority demonstrating that it has been designed to ensure there will be minimal light spill onto the site boundaries and the surrounding area.

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Costs Decision

Site visit made on 2 March 2021

by **Stephen Wilkinson BA (Hons) BPL DIP LA MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Costs application in relation to Appeal Ref: APP/V2255/W/20/3256730 land at Chequers Way, Minster Kent ME12 3SH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Alderson for a partial award of costs against Swale Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of 5No. dwellings on land to the south of Chequers Road with matters other than access reserved.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the process.
3. The application has been made on the basis that the award of costs is for a full award from the point at which the Council claimed they could demonstrate a 5 year housing land supply to the eventual point when they confirmed that this was not the case. Accordingly, I have treated this as an application for a partial award.
4. The officer's report to Planning Committee, dated 25 June 2020 identified that the Council had an undersupply of housing land. This was a primary reason for the recommendation to grant permission. Members of the Committee decided to arrange a site visit before making a decision and at this point the applicant lodged the appeal against non-determination.
5. From the Council's evidence submitted in respect of the appeal, it is unclear the basis of the Committee's resolution to refuse the application against the officer's original recommendation, had it been in a position to do so, following the lodging of the appeal.
6. Whilst the Council does regret the miscalculation of its 5 year housing land supply, this would appear to have only recently come to light, following its response to enquiries of an Inspector colleague in respect of another appeal¹.

¹ APP/V2255/W/20/3249359

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7. On the evidence available to me, it is unclear whether the Committee's resolution was informed by evidence in respect of housing land supply or other matters.
8. Although the Council's mistakes amount to unreasonable behaviour, the fact that the applicant has sought costs in respect of the previous appeal², for the same body of work, demonstrates that unnecessary expenditure solely pertaining to this appeal has not been incurred.

Conclusions

9. I therefore find that whilst unreasonable behaviour has occurred, unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Therefore, an award of costs is not justified.

Stephen Wilkinson

INSPECTOR

² ibid